

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOHN CLARIZIA, FRANCES ERVING, and JOHNNIE
ERVING, on behalf of themselves and all others
similarly situated,

Plaintiffs,

-v-

OCWEN FINANCIAL CORPORATION, OCWEN
LOAN SERVICING, LLC, SAXON MORTGAGE
SERVICES, INC., MORGAN STANLEY, ASSURANT,
INC. (d/b/a/ Assurant Specialty Property), and
AMERICAN SECURITY INSURANCE COMPANY,

Defendants.

Civil Action No. 13 Civ. 02907 (ALC)

**PLAINTIFF'S NOTICE OF
SUPPLEMENTAL AUTHORITY IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS**

Plaintiffs respectfully submit this Notice of Supplemental Authority in further support of Plaintiff's Opposition to Defendants' Motions to Dismiss.

On April 7, 2014, Judge Cohn of the United States District Court for the Southern District of Florida denied a motion to dismiss in *Mahdavi v. SunTrust Mortgage, Inc.*, No. 0:13-cv-62801, Dkt. No. 60 (S.D. Fla. Apr. 7, 2014), an action concerning force-placed hazard insurance. The court upheld the plaintiffs' claims for breach of contract and breach of the implied covenant of good faith and fair dealing, as well as, claims for breach of fiduciary duty. For the Court's convenience, a copy of this decision is attached hereto as Exhibit 1.

On March 27, 2014, Judge D'Agostino of the United States District Court for the Northern District of New York denied a motion to dismiss in *Hoover v. HSBC Mortgage Corp. (USA)*, No. 3:13-cv-149, Dkt. No. 85 (N.D.N.Y. Mar. 27, 2014), an action concerning force-placed flood insurance. The court upheld the plaintiffs' claims for breach of contract and breach of the implied covenant of good faith and fair dealing, as well as, claims for conversion, unjust enrichment, and violation of New York's consumer statutes. In doing so, she rejected Assurant

and the Loan Servicer's arguments that the filed rate doctrine precluded the plaintiffs' claims. For the Court's convenience, a copy of this decision is attached hereto as Exhibit 2.

On March 25, 2014, Judge Cohn of the United States District Court for the Southern District of Florida denied a motion to dismiss in *Hamilton v. SunTrust Mortgage Inc.*, No. 13-60749, Dkt. No. 145 (S.D. Fla. Mar. 25, 2014), an action concerning force-placed hazard insurance. The court upheld the plaintiffs' claims for breach of contract and breach of the implied covenant of good faith and fair dealing. For the Court's convenience, a copy of this decision is attached hereto as Exhibit 3.

On March 24, 2014, Judge Ryskamp of the United States District Court for the Southern District of Florida denied a motion to dismiss in *Carden v. ING Bank, FSB et al.*, No. 13-cv-80659, Dkt. No. 70 (S.D. Fla. Mar. 24, 2014), an action concerning force-placed insurance. The plaintiffs asserted claims of breach of contract and breach of the implied covenant of good faith and fair dealing, along with unjust enrichment, breach of fiduciary duty, conversion, tortious interference with business relationships, and aiding and abetting breach of fiduciary duty claims against the loan servicer and force-placed insurance vendor. For the Court's convenience, a copy of this decision is attached hereto as Exhibit 4.

On March 21, 2014, Magistrate Judge Beeler of the United States District Court for the Northern District of California denied a renewed motion to dismiss force-placed flood insurance claims in *Ellsworth v. U.S. Bank, N.A.*, No. 12-cv-2506, 2014 WL 1218833 (N.D. Cal. Mar. 21, 2014). The court sustained plaintiffs' claims for breach of contract and breach of the covenant of good faith and fair dealing against U.S. Bank, and unjust enrichment and violations of the California Business and Professions Code section 17200 against U.S. Bank and its force-placed insurance vendor. In doing so, the court rejected the defendants' argument that the filed rate doctrine precluded the plaintiffs' claims. For the Court's convenience, a copy of this decision is attached hereto as Exhibit 5.

On March 14, 2014, Chief Judge Chambers of the United States District Court for the Southern District of West Virginia denied the defendant's motion to dismiss breach of contract

claims in *Tinsley v. OneWest Bank, FSB*, No. 3:13-cv-23241, 2014 WL 1017516 (S.D. W.Va. Mar. 14, 2014). The court specifically upheld the plaintiff's breach of contract claim based on allegations that the defendant loan servicer required the plaintiff to obtain flood insurance in excess of what was required under the Deed of Trust, force-placed such insurance and charged the cost to the plaintiff. For the Court's convenience, a copy of this decision is attached hereto as Exhibit 6.

Dated: April 16, 2014

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 16, 2014, I electronically filed the foregoing with the Clerk of the United States District Court for the Southern District of New York through the CM/ECF system, thereby automatically serving all registered parties.

/s/ Peter A. Muhic

Peter A. Muhic